

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

VYAIRE MEDICAL, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11217 (____)

(Joint Administration Requested)

**APPLICATION OF DEBTORS
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND
APPROVING THE APPOINTMENT OF OMNI AGENT SOLUTIONS, INC.
AS CLAIMS AND NOTICING AGENT AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” and, each, a “Debtor”) state as follows in support of this application:²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) appointing Omni Agent Solutions, Inc. (“Omni”) as claims and noticing agent (“Claims and Noticing Agent”) for the Debtors in these chapter 11 cases, effective as of the Petition Date, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in these chapter 11 cases; and (b) granting related relief. In support of this application, the Debtors submit the *Declaration of*

¹ The last four digits of Debtor Vyair Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://omniagentsolutions.com/Vyair>. The location of Debtor Vyair Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyair Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Paul H. Deutch in Support of the Application of Debtors for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Agent Solutions, Inc. as Claims and Noticing Agent and (II) Granting Related Relief (the “Deutch Declaration”), attached hereto as **Exhibit B**. The Debtors’ selection of Omni to act as the Claims and Noticing Agent has satisfied the Claims Agent Protocol (as defined below), in that the Debtors have obtained and reviewed engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit, based on all engagement proposals obtained and reviewed, that Omni’s rates are competitive and reasonable given Omni’s quality of services and expertise. The terms of Omni’s retention are set forth in the engagement agreement attached as Exhibit 1 to the Order (the “Engagement Agreement”); *provided* that Omni is seeking approval solely of the terms and provisions as set forth in this application and the Order.

2. By separate application, the Debtors will seek authorization to retain and employ Omni as administrative agent in these chapter 11 cases pursuant to section 327(a) of the Bankruptcy Code (as defined below) if the administration of these chapter 11 cases will require Omni to perform duties outside the scope of 28 U.S.C. § 156(c).

Jurisdiction and Venue

3. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the “Court”) under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this application to the extent that it is later determined that the Court, absent consent of the parties,

cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 156(c) of title 28 of the United States Code, section 503 of chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), rule 2002(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Local Rules 2002-1(f) and 9013-1(m), and the Court’s *Protocol for the Employment of Claims and Noticing Agents Under 28 U.S.C. § 156(c)*, instituted by the Clerk of the Court on February 1, 2012 (the “Claims Agent Protocol”).

Background

6. Vyair Medical, Inc., together with its direct and indirect subsidiaries (collectively, “Vyair” or the “Company”), is a global company focused on developing products and providing related services for the diagnosis, treatment, and monitoring of various cardiology, pulmonology, and respiratory health conditions. With a 70-year history of pioneering breathing technology, the integrated solutions offered by the Company help enable, enhance, and extend lives. Headquartered in Mettawa, Illinois, Vyair operates approximately 27 offices and manufacturing facilities, and employs approximately 950 individuals around the world. The Company has a global reach, and Vyair products are available in more than 100 countries. Its customers are the hospitals, health centers, and private practice facilities delivering life-enhancing products and services to patients every day.

7. On June 9, 2024 (the “Petition Date”), Vyair Medical, Inc. and certain of its subsidiaries filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant

Bankruptcy Code. Concurrently with the filing of this application, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

Omni's Qualifications

8. Omni is comprised of leading industry professionals with significant experience in the administrative aspects of large, complex chapter 11 cases. Omni's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of these chapter 11 cases and experience in matters of this size and complexity. Omni's professionals have acted as debtors' claims and noticing agent and/or administrative agent in many large bankruptcy cases in this district and in other districts nationwide, including: *In re Never Slip Holdings, Inc.*, No. 24-10663 (LSS) (Bankr. D. Del. Apr. 1, 2024); *In re Sunlight Financial Holdings, Inc.*, No. 23-11794 (MFW) (Bankr. D. Del. Nov. 1, 2023); *In re UpHealth Holdings, Inc.*, No. 23-11476 (LSS) (Bankr. D. Del. Oct. 24, 2023); *In re Desolation Holdings, LLC*, No. 23-10597 (BLS) (Bankr. D. Del. May 10, 2023); *In re Lannett Co., Inc.*, No. 23-10559 (JKS) (Bankr. D. Del. May 5, 2023); *In re Lincoln Power, LLC*, No. 23-10382 (LSS) (Bankr. D. Del. Apr. 3, 2023); *In re Independent Pet Partners Holdings, LLC*, No. 23-10153 (LSS) (Bankr. D. Del. Feb. 5, 2023); *In re Performance Powersports Group Investor, LLC*, 23-10047 (LSS) (Bankr. D. Del. Jan. 18, 2023); *In re Vesta Holdings, LLC*, No. 22-11019 (LSS) (Bankr. D. Del. Nov. 1, 2022); *In re Kabbage, Inc. d/b/a KServicing*, No. 22-10951 (CTG) (Bankr. D. Del. Oct. 6, 2022); *In re Gold Standard Baking, LLC*, No. 22-10559 (JKS) (Bankr. D. Del. June 23, 2022). Omni will follow procedures that conform to applicable guidelines promulgated by the Clerk of the Court and the Judicial Conference, and as may be entered by the Court's order.

9. By appointing Omni as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the United States Bankruptcy Court for the District of Delaware (the “Clerk’s Office”) will be relieved of the administrative burden of processing proofs of claims, if any.

Services to Be Provided

10. This application pertains only to the work to be performed by Omni under the Clerk’s delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f), and any work to be performed by Omni outside of this scope is not covered by this application or by any order granting approval hereof. Specifically, Omni will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto:

- a. prepare and serve required notices and documents in these chapter 11 cases in accordance with the Bankruptcy Code and the Bankruptcy Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of these chapter 11 cases and the initial meeting of creditors, if any, under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, if necessary, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement or confirmation of the Debtors’ chapter 11 plan, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these chapter 11 cases;
- b. if necessary, maintain an official copy of the Debtors’ schedules of assets and liabilities and statements of financial affairs (collectively, the “Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;
- c. maintain (i) a list of all potential creditors, equity holders, and other parties in interest, and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rule 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; and update and make said lists available upon request by a party in interest or the Clerk’s Office;

- d. if necessary, furnish a notice to all potential creditors of the last date for filing proofs of claim and, if necessary, a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- e. maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- f. for all notices, applications, orders, or other pleadings or documents served, prepare and file or cause to be filed with the Clerk's Office an affidavit or certificate of service within seven business days of service which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was served (in alphabetical order) with their mailing or email addresses as appropriate, (iii) the manner of service, and (iv) the date served;
- g. process all proofs of claim received, if any, including those received by the Clerk's Office, check processing for accuracy, and maintain the original proofs of claim in a secure area;
- h. provide an electronic interface for filing proofs of claim;
- i. (i) maintain the official claims register for each Debtor (collectively, the "Claims Registers") on behalf of the Clerk's Office on a case specific website; (ii) upon the Clerk's Office's request, provide the Clerk's Office with certified, duplicate unofficial Claims Registers; and (iii) specify in the Claims Registers the following information for each claim docketed: (A) the claim number assigned, (B) the date received, (C) the name and address of the claimant and agent, if applicable, who filed the claim, (D) the amount asserted, (E) the asserted classification(s) of the claim (e.g., secured, unsecured, priority, etc.), (F) the applicable Debtor, and (G) any disposition of the claim;
- j. implement necessary security measures to ensure the completeness and integrity of the Claims Registers, if any, and the safekeeping of the original claims;
- k. record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- l. relocate, by messenger or overnight delivery, all of the proofs of claim filed directly with the court to Omni's offices, not less than weekly;

- m. upon completion of the docketing process for all claims received to date for each case, turn over to the Clerk's Office copies of the Claims Registers for the Clerk's Office's review (upon the Clerk's Office's request);
- n. monitor the Court's docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations on and/or changes to the Claims Registers and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;
- o. identify and correct any incomplete or incorrect addresses in any mailing or service lists;
- p. assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website, and/or call center;
- q. if these chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's Office within three days of notice to Omni of entry of the order converting these chapter 11 cases;
- r. 30 days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Omni and terminating the services of such agent upon completion of its duties and responsibilities and upon the closing of these chapter 11 cases; and
- s. within seven days of notice to Omni of entry of an order closing these chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of these chapter 11 cases.

11. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Omni.

Professional Compensation

12. The Debtors respectfully request that the undisputed fees and expenses incurred by Omni in the performance of the above services be treated as administrative expenses of the Debtors' chapter 11 estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or

order of the Court. Omni agrees to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred, and to serve monthly invoices on the Debtors, the office of the United States Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

13. Prior to the Petition Date, the Debtors provided Omni a retainer in the amount of \$50,000. Omni seeks to hold the retainer under the Engagement Agreement during these chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

Disinterestedness

14. Although the Debtors do not propose to employ Omni under section 327 of the Bankruptcy Code pursuant to this application (such retention will be sought by separate application), Omni has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Deutch Declaration, Omni has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

15. Moreover, in connection with its retention as Claims and Noticing Agent, Omni represents in the Deutch Declaration, among other things, that:

- a. Omni is not a creditor of the Debtors;
- b. Omni will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;

- c. by accepting employment in these chapter 11 cases, Omni waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- d. in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Omni will not be an agent of the United States and will not act on behalf of the United States;
- e. Omni will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- f. Omni is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
- g. in its capacity as Claims and Noticing Agent in these chapter 11 cases, Omni will not intentionally misrepresent any fact to any person;
- h. Omni shall be under the supervision and control of the Clerk’s Office with respect to the receipt and recordation of claims and claim transfers;
- i. Omni will comply with all requests of the Clerk’s Office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j. none of the services provided by Omni as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk’s Office.

16. Omni will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

Compliance with Claims and Noticing Agent Protocol

17. This application complies with the Claims Agent Protocol and substantially conforms to the standard application in use in this Court. To the extent that there is any inconsistency between this application, the Order and the Engagement Agreement, the Order shall govern.

Basis for Relief

18. Section 156(c) of title 28 of the United States Code, which governs the staffing and expenses of bankruptcy courts, authorizes the Court to use “facilities” or “services” other than the Clerk’s Office for administration of bankruptcy cases. It states:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

19. In addition, Local Rule 2002-1(f) provides:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (which can be found on the Court’s website) and shall perform the Claims and Noticing Services.

20. In accordance with the Claims Agent Protocol, prior to the selection of Omni, the Debtors reviewed and compared engagement proposals from three court-approved claims and noticing agents, including Omni, to ensure selection through a competitive process. The Debtors submit, based on the engagement proposals obtained and reviewed, that Omni’s rates are competitive and reasonable given Omni’s quality of services and expertise. The terms of Omni’s retention are set forth in the Engagement Agreement; *provided* that Omni is seeking by this application approval solely of the terms and provisions as set forth in this application and the Order as set forth in Exhibit 1 to the Order.

Notice

21. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) counsel to the 1L Ad Hoc Group; (h) the agent of the DIP Facility and counsel thereto; (i) the agent of the First Lien Credit Agreement and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this application is seeking "first day" relief, the Debtors will serve copies of this application and any order entered in respect to this application as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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WHEREFORE, the Debtors request entry of the Order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 10, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

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